

Department of Justice

§ 104.47

(1) Disability; in general. In evaluating claims of disability, the Special Master will, in general, make a determination regarding whether the claimant is capable of performing his or her usual profession in light of the injuries.

(2) Total permanent disability. With respect to claims of total permanent disability, the Special Master may accept a determination of disability made by the Social Security Administration as evidence of disability without any further medical evidence or review. The Special Master may also consider determinations of permanent total disability made by other governmental agencies or private insurers in evaluating the claim. The Special Master may require that the claimant submit an evaluation of the claimant's disability and ability to perform his or her occupation prepared by medical experts.

(3) Partial disability. With respect to claims of partial disability, the Special Master may consider evidence of the effect of the partial disability on the claimant's ability to perform his or her usual occupation as well as the effect of the partial disability on the claimant's ability to participate in usual daily activities.

(b) *Medical Expense Loss.* This loss equals the out-of-pocket medical expenses that were incurred as a result of the physical harm suffered by the victim (i.e., those medical expenses that were not paid for or reimbursed through health insurance or other programs for which the claimant was not charged). In addition, this loss equals future out-of-pocket medical expenses that will be incurred as a result of the physical harm suffered by the victim (i.e., those medical expenses that will not be paid for or reimbursed through health insurance). These losses shall be calculated on a case-by-case basis, using documentation and other information submitted by the claimant.

(c) *Replacement services loss.* For injured claimants who did not have any prior earned income, or who worked only part-time outside the home, economic loss may be determined with reference to replacement services and similar measures.

(d) *Loss of business or employment opportunities.* Such losses shall be ad-

ressed through the procedure outlined above in paragraph (a) of this section.

§ 104.46 Determination of presumed noneconomic losses for claimants who suffered physical harm.

The Special Master may determine the presumed noneconomic losses for claimants who suffered physical harm (but did not die) by relying upon the noneconomic losses described in § 104.44 and adjusting the losses based upon the extent of the victim's physical harm. Such presumed losses include any noneconomic component of replacement services loss.

§ 104.47 Collateral sources.

(a) *Payments that constitute collateral source compensation.* The amount of compensation shall be reduced by all collateral source compensation the claimant has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001, or debris removal in the immediate aftermath, including life insurance, pension funds, death benefits programs, payments by Federal, State, or local governments related to the terrorist-related aircraft crashes of September 11, 2001, or debris removal, including under the World Trade Center Health Program established under section 3001 of the Public Health Service Act (to the extent such program is authorized, at the time of the payment, to continue operations), and payments made pursuant to the settlement of a civil action as described in section 405(c)(3)(C)(iii) of the Act. In determining the appropriate collateral source offset for future benefit payments, the Special Master may employ an appropriate methodology for determining the present value of such future benefits. In determining the appropriate value of offsets for pension funds, life insurance and similar collateral sources, the Special Master may, as appropriate, reduce the amount of offsets to take account of self-contributions made or premiums paid by the victim during his or her lifetime. In determining the appropriate collateral source offset for future benefit payments that are contingent upon one or more future event(s), the Special

Master may reduce such offsets to account for the possibility that the future contingencies may or may not occur. In cases where the recipients of collateral source compensation are not beneficiaries of the awards from the Fund, the Special Master shall have discretion to exclude such compensation from the collateral source offset where necessary to prevent beneficiaries from having their awards reduced by collateral source compensation that they will not receive.

(b) *Payments that do not constitute collateral source compensation.* The following payments received by claimants do not constitute collateral source compensation:

(1) The value of services or in-kind charitable gifts such as provision of emergency housing, food, or clothing; and

(2) Charitable donations distributed to the beneficiaries of the decedent, to the injured claimant, or to the beneficiaries of the injured claimant by privately funded charitable entities; provided however, that the Special Master may determine that funds provided to victims or their families through a privately funded charitable entity constitute, in substance, a payment described in paragraph (a) of this section.

(3) Tax benefits received from the Federal government as a result of the enactment of the Victims of Terrorism Tax Relief Act.

Subpart E—Payment of Claims

§ 104.51 Payments to eligible individuals.

(a) *Payment date.* Subject to paragraph (c) of this section, the Special Master shall authorize payment of an award to a claimant not later than 20 days after the date on which:

(1) The claimant accepts the presumed award; or

(2) A final award for the claimant is determined after a hearing on appeal.

(b) *Failure to accept or appeal presumed award.* If a claimant fails to accept or appeal the presumed award determined for that claimant within 30 days, the presumed award shall be deemed to have been accepted and all rights to appeal the award shall have been waived.

(c) *Pro-rata and payment of remaining claims.* The James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111–347, requires that the total amount of Federal funds paid for expenditures including compensation with respect to claims filed on or after October 3, 2011, will not exceed \$2,775,000,000. Furthermore, the total amount of Federal funds expended during the period from October 3, 2011, through October 3, 2016, may not exceed \$875,000,000.

(1) *In general.* The Special Master shall ratably reduce the amount of compensation due claimants in a manner to ensure, to the extent possible, that all claimants who are determined to be entitled to a payment receive a payment during the period from October 3, 2011, to October 3, 2016, and that the total amount of all such payments made during that 5-year period do not exceed the amount available under law during that period. The Special Master may periodically adjust the amount of ratable reduction in light of available information regarding potential future claims and available funds, and may make additional payments in light of such adjustments.

(2) *Subsequent payments.* Subject to paragraph (c)(3) of this section, in any case in which the amount of a claim is ratably reduced pursuant to paragraph (c)(1) of this section, on or after October 3, 2016, but in no event later than October 3, 2017, the Special Master shall pay to the claimant the amount that is equal to the difference between:

(i) The amount that the claimant would have been paid under the presumed award; and

(ii) The amount the claimant was paid during the period from October 3, 2011, to October 3, 2016.

(3) In the event that the total amount of all claims under paragraph (c)(2) of this section exceeds the amount available under law, the Special Master shall ratably reduce the amount of compensation due claimants in a manner to ensure, to the extent possible, that all claimants who are determined to be entitled to an additional payment receive their pro-rated share of the available funds.

(4) At the time at which subsequent payments are made, the Special Master